

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR JACKSON COUNTY
 2 MEDFORD IRRIGATION DISTRICT,)
 a quasi-municipal corporation)
 3 of the State of Oregon,)
 4 Plaintiff,)
 5 vs.)
 6 CITY OF PHOENIX, a municipal)
 corporation,)
 7 Defendant.)
 8 _____)

No. 66-511-2

SUMMONS

9 TO CITY OF PHOENIX, THE ABOVE NAMED DEFENDANT:

10 IN THE NAME OF THE STATE OF OREGON you are hereby required to
 11 appear and answer the complaint filed against you in the above
 12 entitled suit within ten (10) days from the date of the service of
 13 this summons upon you if served within Jackson County, Oregon, or
 14 if served upon you within any other County of Oregon, then within
 15 twenty (20) days from the date of the service of this summons upon
 16 you, or if served upon you outside the State of Oregon, but within
 17 the United States of America, then within four (4) weeks from the
 18 date of the service of this summons upon you; and if you fail to
 19 answer or otherwise appear within the time required, for want thereof
 20 Plaintiff will apply to the court for the relief prayed for in
 21 Plaintiff's complaint, a true and correct copy of this complaint
 22 being herewith served upon you.

23 HARBISON, KELLINGTON & KELLINGTON

24 By G. W. Kellington
 25 Of Attorneys for Plaintiff

26
 27 230 West Main Street
 28 Medford, Oregon

State of Oregon,)
 County of Jackson) ss.

I hereby certify that the foregoing copy of

_____ is a true copy of the
 whole of said original now on file in this office.

Sheriff of Jackson County, Oregon

By _____ Dep.

HARBISON, KELLINGTON & KELLINGTON
 ATTORNEYS AT LAW
 230 WEST MAIN
 MEDFORD, OREGON 97501

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR JACKSON COUNTY

2 MEDFORD IRRIGATION DISTRICT,
3 a quasi-municipal corporation
4 of the State of Oregon,

5 plaintiff,

6 vs.

7 CITY OF PHOENIX, a municipal
8 corporation,

9 Defendant.

No.

COMPLAINT

10 COMES NOW Plaintiff and for cause of action against Defendant
11 alleges:

12 I.

13 That from and after the year 1919, Plaintiff has been, and now
14 is, an irrigation district, existing under and by virtue of the laws
15 of the State of Oregon and as such irrigation district has the
16 authority to establish, construct, use and maintain irrigation
17 canals for the transportation of irrigation water and to acquire
18 easements on real property by agreement or condemnation for said
19 purpose.

20 II.

21 That Defendant Town, now City, of Phoenix, Jackson County,
22 Oregon, is a municipal corporation organized and existing under
23 and by virtue of the laws of the State of Oregon.

24 III.

25 That Plaintiff understands and believes and on such information
26 and belief alleges that prior to the 26th day of October, 1920,
27 Plaintiff's now existing canal through the City of Phoenix was
28 constructed over, along and across certain public streets and alleys
29 therein by Rogue River Valley Canal Company, an Oregon corporation,
30 under and by virtue of an agreement between said City and said Canal
31 Company as evidenced by a document addressed to the Honorable Common
32 Council of the Town of Phoenix, Oregon, by said Canal Company under
33 date of September 2, 1951, and Ordinance No. 30 promulgated by said

1 Common Council under date of October 4, 1915; that a copy of said
2 document of September 2, 1915, is hereunto attached and marked
3 Exhibit "A" and that a copy of said Ordinance is hereunto attached
4 and marked Exhibit "B"; that said documents by this reference
5 thereto are hereby made a part hereof; and that Plaintiff is informed
6 and believes that said copies are true, full and correct copies of
7 the originals thereof and such information and belief alleges the
8 said copies to be full, true and correct copies of the originals
9 thereof.

10 IV.

11 That on or about the 26th day of October, 1920, this Plaintiff
12 among other things succeeded to the rights of said Canal Company
13 in and to said existing irrigation canal through the said City of
14 Phoenix, Oregon, and ever since the said day, Plaintiff has
15 continuously used, operated and maintained and is presently using,
16 operating and maintaining said irrigation canal.

17 V.

18 That said purported agreement as evidenced by Exhibits "A" and
19 "B" hereof, purported to allow and permit the said Canal Company
20 and its successors in interest to construct said irrigation canal
21 where it now exists and thereafter to use, operate, and maintain
22 said canal for a term of 50 years and that said term of years
23 expired in 1965.

24 VI.

25 That incidental to the construction of said canal the Plaintiff
26 or its predecessor in interest acquired title to its present right
27 of way through all of the theretofore privately owned real property
28 traversed by its canal and within the corporate limits of said city.

29 VII.

30 That since the expiration of said term, the Plaintiff, through
31 its duly qualified officers and under and by the terms of
32 resolution duly and regularly proposed and passed, has diligently

1 negotiated with said City for the settlement of a controversy for
2 a right of way and perpetual easement for said irrigation canal as
3 the same is now located over, along and across certain public
4 streets and alleys of said City, but that Plaintiff has been unable
5 to reach an agreement with said Defendant with respect to the
6 acquisition of said easement.

7 VIII.

8 That it is the judgment of Plaintiff and prior to the commence-
9 ment of this action, the Plaintiff by appropriate resolution,
10 declared that it is necessary that Plaintiff continue the use,
11 operation and maintenance of said canal as the same now exists, and
12 that it is necessary that Plaintiff acquire an easement for such
13 purpose where its said canal now exists over, along and across said
14 certain public streets and alleys within said city and more
15 particularly described as follows, to-wit:

16 All of the real property lying within 11.00 feet, when
17 measured at right angles, on each side of the following described
18 centerline of Medford Irrigation District canal where the same
19 traverse the City of Phoenix, Jackson County, Oregon, to-wit:

20 Commencing at Station 0+00 as shown on the map of the 1966 survey
21 of the Medford Irrigation District Canal through the City of
22 Phoenix, Jackson County, Oregon, said point being the intersection
23 of the above mentioned canal center line and the Northeasterly line
24 of South Rose Avenue, which point also bears North 692.94 feet and
25 West 432.20 feet from the Northwest corner of Donation Land Claim
26 No. 43, Township 38 South, Range 1 West, Willamette Meridian,
27 thence along the existing average canal center line South 67°37'
28 38" West 55.95 feet; thence North 86°29'22" West 254.12 feet;
29 thence 62.69 feet on the arc of a curve concave to the right,
30 (which arc has a radius of 72.38 feet and a long chord of North
31 61°40'43" West 60.74 feet); thence North 36°52'04" West 229.62
32 feet; thence North 79°57'41" West 197.41 feet; thence North 35°
10'15" West 820.03 feet; thence 140.35 feet on the arc of a curve
concave to the left (which arc has a radius of 218.77 feet and a
long chord of North 53°33'00" West 137.96 feet), said point being
the point of beginning of the strip of land being described in
Jackson County Deed Records, Volume 389, Page 364; thence 165.82
feet on the arc of a curve concave to the left (which arc has a
radius of 171.03 feet and a long chord of South 80°15'45" West
159.40 feet) to a point of reverse curve; thence 108.73 feet on
an arc of a curve concave to the right (which arc has a radius
of 67.41 feet and a long chord of North 81°16'15" West 97.32
feet); thence North 35°03'45" West (Record North 35°05'45" West)
186.76 feet; thence 59.28 feet on an arc of a curve concave to

1 the right (which arc has a radius of 95.49 feet and a
2 long chord of North 17°16'45" West (Record North 17°18'
3 45" West) 58.33 feet); thence North 0°30'15" East (Record
4 North 0°28'15" West) 51.20 feet; thence 63.33 feet on an
5 arc of a curve concave to the left (which arc has a radius
6 of 95.49 feet and a long chord of North 18°29'45" West
7 (Record North 18°31'45" West) 62.18 feet) thence North
8 37°27'15" West 206.48 feet; thence North 38°34'41" West
9 176.80 feet; thence North 36°54'15" West 170.30 feet;
10 thence North 51°24'39" West 67.65 feet; thence North 68°
11 58'42" West 37.75 feet, at which point the average center
12 line of said canal intersects the North limits of the City
13 of Phoenix, and a stone with "X" bears North 52°10'00" East
14 304.15 feet, also at which point the South Southeast corner
15 of Donation Land Claim No. 41 bears North 1452.05 feet and
16 West 728.32 feet.

17 and within the public thoroughfares of said City, namely, Rose
18 Avenue; Oak Street; "B" Street; Ash Street; Maple Street; First Street;
19 "G" Street; the northeasterly-southwesterly alley in Blocks 32 and
20 33 of the Railroad Addition to said City and the dedicated but not
21 improved county road the centerline of which coincides with the
22 south boundary line of Section 9, Township 38 South, Range 1 West
23 of the Willamette Meridian and all within the corporate city limits
24 of the City of Phoenix, Jackson County, State of Oregon.

25 The acquisition of such said easement over, along and across said
26 public streets and alleys as above described is necessary for a public
27 use.

28 IX.

29 That the Defendant claims some interest in and to the portions
30 of said public streets and alleys over, along or across which said
31 canal now is situate.

32 X.

33 That Defendant is not entitled to compensation for the easement
34 hereinabove described.

35 XI.

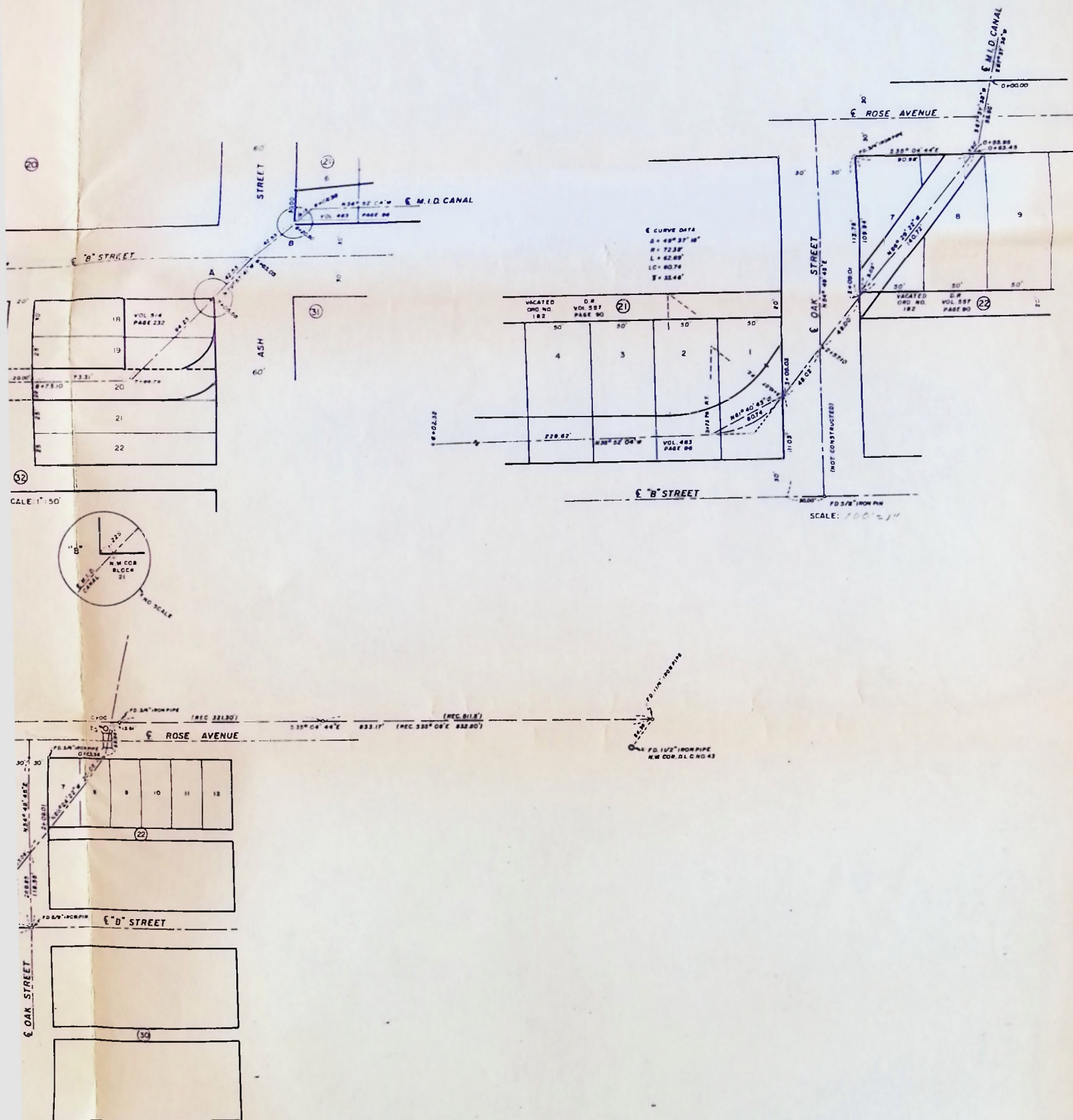
36 That in the event the court decides that Defendant is entitled
37 to compensation for such easement, the court should determine the
38 true value thereof.

39 WHEREFORE Plaintiff prays for judgment resting in Plaintiff, a

1 nonexclusive easement over, along and across said public streets and
2 alleys within the corporate limits of the City of Phoenix, Jackson
3 County, Oregon, for the purpose of using, operating and maintaining
4 its said irrigation canal. Plaintiff further prays for judgment of
5 this court denying Defendant any right to compensation or in the
6 alternative, that this court determine and award to Defendant the
7 amount of compensation, if any, that Defendant is entitled to herein.

8 HARBISON, KELLINGTON & KELLINGTON

9
10 By G. W. Kellington
Of Attorneys for Plaintiff



MAP OF SURVEY

LOCATED IN

S.E. 1/4 SEC. 9, N.W. 1/4 SEC. 15 AND THE N.E. 1/4 SEC. 16

T. 38 S., R. 1 W., W.M.

JACKSON COUNTY, OREGON

FOR

MEDFORD IRRIGATION DISTRICT PHOENIX CANAL-THRU CITY OF PHOENIX

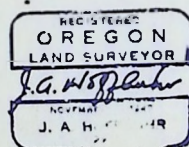
J.A. HOFFBUHR, REG. L.S.

MEDFORD, OREGON

SCALE 200' = 1"

APRIL 18, 1966

BASIS OF BEARING - R/S NO. 2365 AND R/S NO. 1914



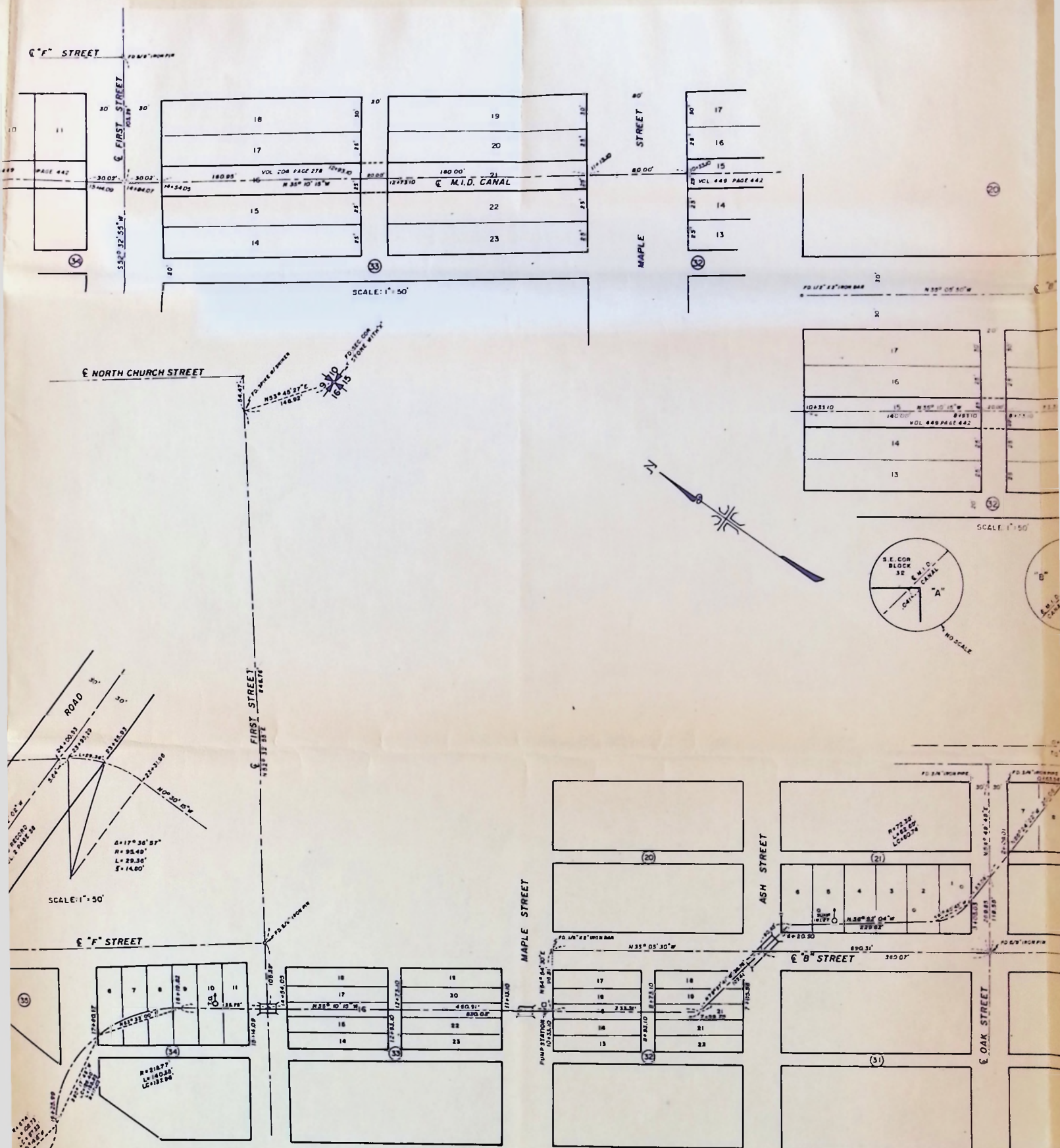
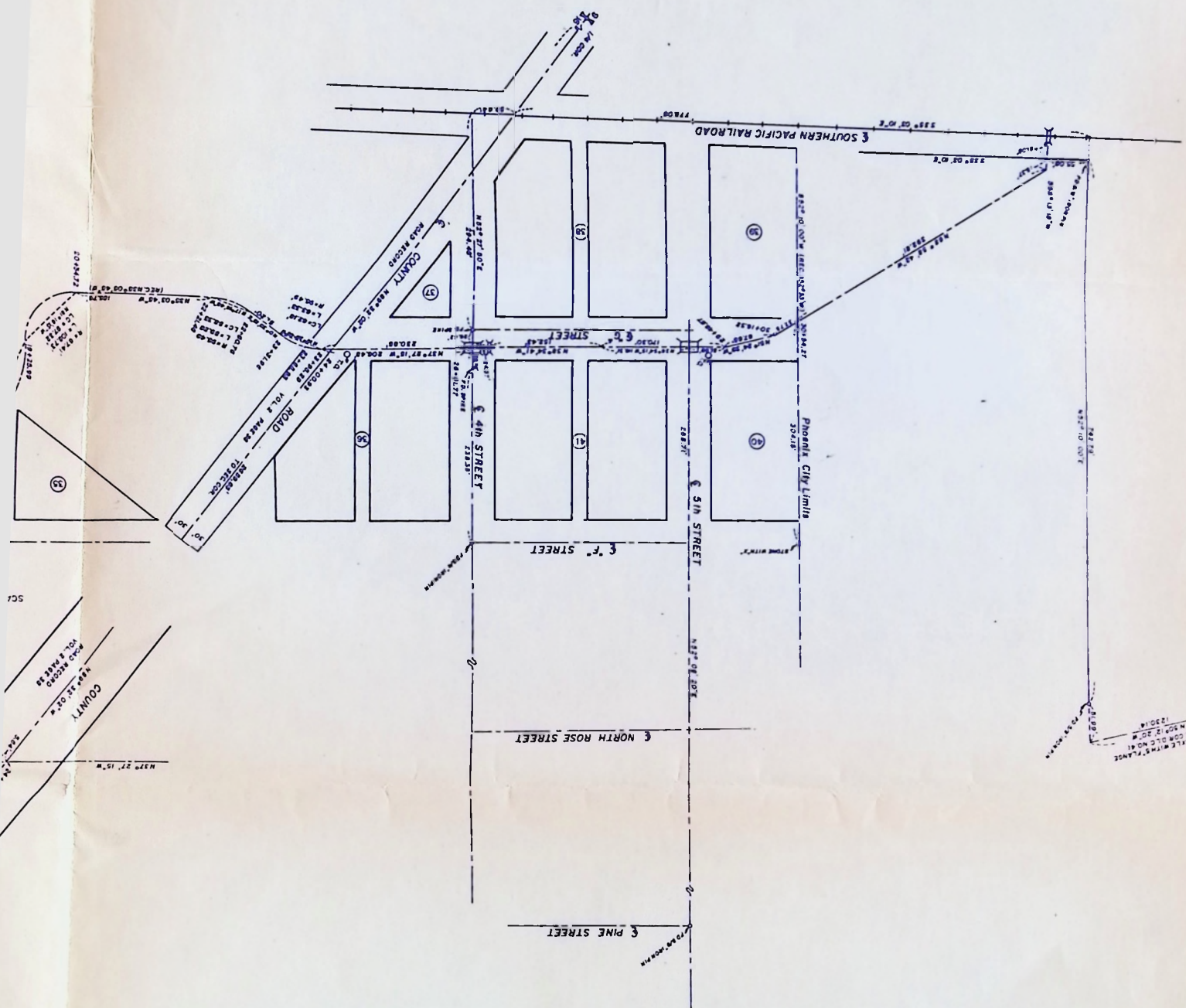


EXHIBIT "A"



PHOENIX CITY LIMITS
N 32° 10' 00" E
120.00'

SC1
COUNTY ROAD
VOL. 4 PAGE 35
N 32° 10' 00" E
120.00'

No.

IN THE COURT

OF THE

STATE OF OREGON

FOR THE

County of

Plaintiff

vs.

Defendant

Filed 19

Clerk

By

Deputy

LAW OFFICES
HARRISON, KELLINGTON & KELLINGTON
230 WEST MAIN
MEDFORD, OREGON 97501

Attorneys for

STATE OF OREGON }
County of Jackson ss.

I, Albert Huener being first duly
sworn, depose and say that I am President of Plaintiff

in the above entitled action ; and that the foregoing
complaint is true, as I verily believe;

Albert Huener
Subscribed and sworn to before me this 23rd
day of MAY 19 66
Doris M. Owens
NOTARY PUBLIC FOR STATE OF OREGON
Commission expires: 3/13/68

(SEAL)
Notarial seal

STATE OF OREGON }
County of Jackson ss.

I hereby certify that I am attorney for Plaintiff
herein; that I have prepared the foregoing copy of complaint

and have carefully compared the same with the original thereof; and that it is a correct transcript therefrom and of the whole
thereof.
Dated this 23rd day of may, 19 66
G. W. Bellington

STATE OF OREGON }
County of Jackson ss.

I, _____ hereby certify that I am attorney for
herein, and that I served a true copy of the
within _____ upon _____,
attorney _____ for the _____ herein, in _____ County,
State of Oregon, on the _____ day of _____, 19 _____ by causing
such true copy to be deposited in the United States Mail at Medford, Oregon, sealed in an envelope with postage fully prepaid
thereon and addressed _____,
being the regular office address of said attorney _____ and that there is a regular communication by mail between the
place of mailing and the place so addressed.

Subscribed and sworn to before me this _____ day of _____, 19 _____
(SEAL)
NOTARY PUBLIC FOR STATE OF OREGON
My Commission Expires: _____

STATE OF OREGON }
County of Jackson ss.

Due and legal service of the within _____ is hereby
accepted in _____ County, Oregon, this _____ day of _____, 19 _____
by receiving a copy thereof, duly certified to as such by attorney for _____
Attorney _____ for _____